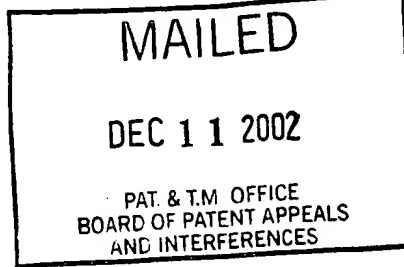


The opinion in support of the decision being
entered today is not binding precedent of the Board.

Filed by: Michael P. Tierney
Administrative Patent Judge
Box Interference
Washington, D.C. 20231
Tel: 703-308-9797
Fax: 703-305-0942



Paper 1

Filed
December 11, 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ALBERTO STAMPA, PELAYO CAMPS, GLORIA RODRIGUEZ,
JORDI BOSCH and MARIA DEL CARMEN ONRUBIA
Junior Party,
(U.S. Patent No. 6,084,100
and U.S. Reissue Application No. 10/234,659)

v.

WILLIAM P. JACKSON
Senior Party,
(U.S. Patent No. 6,093,827 and
U.S. Application No. 09/525,894).

Patent Interference No. 105,069 (MPT)

NOTICE DECLARING INTERFERENCE

Part A. Background Information

Both Stampa and Jackson disclose and claim a process for the preparation of loratadine. Loratadine is said to be the active pharmaceutical ingredient in the antihistimine sold by Schering Corporation under the brand name CLARITIN®.

Stampa's U.S. Patent No. 6,084,100 ("Stampa '100") and Jackson's U.S. Patent No. 6,093,827 ("Jackson '827") were involved in a judicial interference action under 35 U.S.C. § 291 in the United States District Court for the Southern District of New York, Civil Action No. 01-3087. The judicial interference action is presently on appeal to the United States Court of Appeals for the Federal Circuit, Appeal Nos. 02-1461, -1480. (See, Interference No. 105,002, SX 1005). Additionally, both Jackson and Stampa's patents are involved in related interferences with a third-party applicant, Rey, U.S. Application No. 09/380,835. (See, Interference Nos. 105,001 & 105,002).

I. Summary of the District Court § 291 Proceeding

In a bench decision dated May 7, 2002, the district court held that the elements of an interference claim are: 1) the existence of an interference; and 2) priority. Generally, the district court held that Stampa (Medichem, S.A.) had established priority of invention, but also determined that there was no interference-in-fact between the parties patents. Stampa has appealed the judgment of no interference-in-fact.

In deciding the question of interfering subject matter, the district court held that two patents interfere when "in light of the specification, drawings and prior art, they claim in whole or in part substantially the same invention." (Citation omitted)(Interference 105,002, SX 1005, Addendum, May 7, 2002 Decision, p. 5, lines 6-9). The court then stated that the test for interference is "sometimes called the two-way patentability test" and referred to the "same

patentable invention" test set forth in 37 C.F.R. § 1.601(n).¹ (Decision, pages 5-6).

Applying the two-way test, the court stated that "the key question is whether the inclusion of tertiary amine in Medichem's [Stampa's] patent claims is material in a way that negates obviousness and makes the patents noninterfering." (Decision, p. 8, lines 10-13). The court also found that "the presence or use of a tertiary amine appears nowhere in the Rolabo [Jackson] '827 patent, strongly suggesting that that patent is a materially different process." (Decision, p. 9, lines 13-16). From this, the court concluded that: "the test of the two-way patentability analysis, is whether someone reasonably skilled in the art would find the elimination of a tertiary amine obvious or anticipated in light of the prior art at the relevant time, which was around 1996." (Decision, p. 9, lines 17-21).

Focusing on the elimination of the tertiary amine, the court then determined that:

Dr. Leckta was wholly credible and convincing and that he gave an explanation for the results obtained under both patents that made logical sense and that, in the Court's view, definitely showed the way someone skilled in the art in and around 1996 would have viewed the inclusion of tertiary amine in Medichem's [Stampa's] patent as a material element of each of the claims of that patent and

would have viewed the effect of the removal of tertiary amine in Rolabo's [Jackson's] patent as significant but far from obvious in the prior art.

¹37 C.F.R. § 1.601(n) states that:

Invention "A" is the same patentable invention as an invention "B" when invention "A" is the same as (35 U.S.C. 102) or is obvious (35 U.S.C. 103) in view of invention "B" assuming invention "B" is prior art with respect to invention "A". Invention "A" is a separate patentable invention with respect to invention "B" when invention "A" is new (35 U.S.C. 102) and non-obvious (35 U.S.C. 103) in view of invention "B" assuming invention "B" is prior art with respect to invention "A".

(Decision, p. 12, lines 11-20). Yet, the court also determined that one skilled in the art would have understood the role played by the addition of the tertiary amine in Stampa's patent and that this role was "exactly as McMurry himself had stated in his 1989 article." (Decision, p. 12, line 24 to p. 13, line 1).

Comparing the parties' claimed processes, the district court concluded that:

What someone skilled in the art would not find obvious, however, was what would be the result if tertiary amine were eliminated from the process, that is, the removal of the added tertiary amine (beyond any tertiary amine automatically present in the molecular structure), and what would happen then if the other elements of the process, such as temperature, were then varied. It was left to Rolabo [Jackson] to make these changes and to come up with a process for making loratadine that, because it dispensed with tertiary amine but still produced loratadine, was easier, faster, and gave a potentially higher yield.

Rolabo [Jackson], in effect, built a better mousetrap. Thus, far from being the same invention, Rolabo's [Jackson's] patented process is a considerably improved process that in no way interferes with plaintiff's process.

Accordingly, the Court finds that the plaintiff [Stampa] has not carried its burden to prove interference, and judgment must therefore be entered in favor of defendant [Jackson].

(Decision, p. 13, line 11 to p. 14, line 3).

II. Overview of Interferences 105,001 & 105,002

The 105,001 interference was declared on July 12, 2002 between Rey's U.S. Application No. 09/380,835 ("Rey '835") and Jackson's '827 patent. Also on July 12, 2002, the APJ declared interference 105,002 between Rey's '835 application and Stampa's '100 patent. While the technology involved in both interferences generally relates to processes for the production of loratadine, there was no apparent basis for considering an interference between Stampa's patent

and Jackson's patent.²

On August 9, 2002, Stampa filed a Notice Pursuant to 37 C.F.R. § 1.660(d) (Paper No. 14) informing the APJ that Stampa's '100 patent and Jackson's '827 patent were involved in the § 291 action discussed above. The APJ requested, and Stampa provided, a copy of the district court transcript of May 7, 2002, Order dated May 8, 2002 and Judgment entered May 13, 2002.

On August 13, 2002, counsel for Rey, Stampa and Jackson participated in a conference call with the APJ to discuss the impact of the district court's decision on the present interferences. During the conference call, the APJ requested information regarding any pending applications claiming 35 U.S.C. § 120 benefit of the involved applications and patents. Jackson indicated that a Jackson application, U.S. Application 09/525,894 ("Jackson '894") was presently pending and claimed § 120 benefit of the involved Jackson patent.³ Additionally, the APJ questioned both Stampa and Jackson as to the existence of any pending reissue applications stemming from their involved patents. Both Stampa and Jackson indicated that no reissue

²The basis for declaring an interference in the USPTO is set forth in 35 U.S.C. § 135(a), which provides for interferences between an *application* and any pending application or unexpired patent.

³During the conference call Jackson's counsel indicated that the prosecution of the Jackson '894 application had been suspended. A review of the '894 application indicates that the examiner suspended prosecution in a communication mailed May 28, 2002 (Paper No. 11) stating that:

All claims are allowable. However, the outcome of a potential interference of the parent application 09/383,078, U.S. Patent No. 6,093,827, has a material bearing on the patentability of the claims in this application. Prosecution in this application is SUSPENDED pending a final judgment in the interference.

(Paper No. 11, p. 2).

applications were pending at that time, however, Stampa expressed an interest in filing a reissue application of its involved '100 patent.

On September 23, 2002, Stampa filed a communication in Interference 105,002. (Paper No. 18). The communication notified the APJ that Stampa had filed Reissue Application Serial No. 10/234,659 ("Stampa '659") on September 3, 2002. Additionally, the communication noted that Medichem's motion to stay the Federal Circuit appeal (No. 02-1461) had been denied.

During a September 25, 2002 conference call, the APJ requested that Stampa provide Jackson a copy of the reissue application and that Jackson provide Stampa with a copy of the pending claims in the Jackson '894 application. Additionally, the APJ invited Stampa and Jackson to provide written comments as to whether or not an interference should be declared between the respective Stampa and Jackson applications and patents. Jackson's brief was received by the Board and placed in Interference No. 105,001 as Paper No. 14. Stampa's brief was filed October 28, 2002 (Interference No. 105,002, Paper No. 24) and Jackson's reply brief was filed November 21, 2002 (Interference No. 105,001, Paper No. 20).

Generally, Jackson's brief argues that the district court's ruling has a preclusive effect upon the declaration of an interference by the United States Patent & Trademark Office. For example, Jackson alleges that Medichem's filing of its reissue application amounts to "blatant forum shopping" and that the basic and accepted principles of the American justice system are contravened if Medichem is allowed to use its reissue application to retry the existence of an interference between Jackson's '827 patent and Stampa's '100 patent. (Jackson Brief, Interference No. 105,001, Paper No. 14, p. 7). Additionally, Jackson's Reply Brief argues that

Jackson's '894 application claims employ the "consisting essentially of" transition and as such, allegedly exclude the use of a tertiary amine. (Jackson Brief, Interference No. 105,001, Paper No. 20, p. 5).

Stampa disagrees with Jackson's analysis and has requested that an interference be declared. According to Stampa, an interference-in-fact exists between Stampa's pending and patented claims and Jackson's pending and patented claims. For example, Stampa alleges that Stampa '100 claim 2 anticipates Jackson '827 claim 17 and that Jackson claim 17 renders Stampa claim 2 obvious.

III. § 291 Proceeding Does Not Preclude Subsequent § 135(a) Interference

Under 35 U.S.C. § 135(a), an interference may be declared whenever an application is made for a patent, which, in the *opinion of the Director*, would interfere with any pending application or any unexpired patent. In contrast, under 35 U.S.C. § 291 an owner of an interfering patent may have relief against the owner of another by civil action where the court addresses the question of validity of the interfering patents.

A prior § 291 interference proceeding does not preclude the Director from declaring an interference under § 135(a). Issue preclusion is appropriate only when the following four elements are satisfied:

- (1) the issue is identical to one decided in the first action; (2) the issue was actually litigated in the first action; (3) resolution of the issue was essential to a final judgment in the first action; and (4) plaintiff had a full and fair opportunity to litigate the issue in the first action.

Masco Corp. v. United States, 303 F.3d 1316, 1329, 64 USPQ2d 1182, 1190 (Fed. Cir. 2002);

In re Freeman, 30 F.3d 1459, 1465, 31 USPQ2d 1444, 1448 (Fed. Cir. 1994). Due to the differences between an interference under § 135(a) and § 291, no issue preclusion arises from a prior § 291 action.

A. Issues Raised in a § 291 Proceeding are Not Identical to a § 135(a) proceeding

i. Director's Opinion is Not an Issue in a § 291 Proceeding

Under 35 U.S.C. § 135(a), an interference may be declared whenever an application is made for a patent, which, in the *opinion of the Director*, would interfere with any pending application or any unexpired patent. Thus, where one party's patent impedes the grant of another party's application under 35 U.S.C. § 102(g), the Director may declare an interference. *Cf.*, *Case v. CPC International Inc.*, 730 F.2d 745, 750, 221 USPQ 196, 200 (Fed. Cir. 1984).

As declared, a proceeding under § 135(a) involves at least one pending application whose grant is impeded. In contrast, a § 291 proceeding involves at least two interfering patents. As the Director's opinion regarding the existence of an interference is not an issue in a § 291 proceeding, the two proceedings raise different issues.

ii. The USPTO Construes Claims with Broadest Reasonable Interpretation

In interpreting the claims and their terms, the Board applies the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise may be afforded by written description contained in applicant's specification. *In re Morris*, 127

F.3d 1048, 1053-54, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). Indeed, the Federal Circuit has commented that:

Patent application claims are given their broadest reasonable interpretation during examination proceedings, for the simple reason that before a patent is granted the claims are readily amended as part of the examination process. [Citation Omitted]. Claims may be amended for the purpose of distinguishing cited references, or in response to objections raised under section 112. Issues of judicial claim construction such as arise after patent issuance, for example during infringement litigation, have no place in prosecution of pending claims before the PTO, when any ambiguity or excessive breadth may be corrected by merely changing the claim.

Burlington Indus., Inc. v. Quigg, 822 F.2d 1581, 1583, 3 USPQ2d 1436, 1438 (Fed. Cir. 1987).

Both parties before us have at least one pending application and at least one issued patent. Thus, unlike a § 291 proceeding, both parties can amend their claims. Specifically, Stampa is before us based on Stampa's '100 patent and '659 reissue application. Jackson is present based upon Jackson's '827 patent and '894 application. A comparison of several Jackson and Stampa claims is provided below.

TABLE 1 JACKSON AND STAMPA CLAIM COMPARISON	
JACKSON '827	STAMPA '100 AND '659
Claim 1. A process for preparing 5,6-dihydro-11H-dibenzo[a,d]cyclohept-11-enes	Claim 1. A process for the preparation of loratadine
<i>comprising</i>	consisting of reacting,
	in an <i>organic solvent</i> and in the presence of a <i>tertiary amine</i> ,
reacting a dibenzosuberone or an aza derivative thereof	8-chloro-5,6-dihydrobenzo[5,6]cyclohepta[1,2-b]pyridin-11-one, of formula VII [structure omitted]

with an aliphatic ketone	and ethyl 4-oxopiperidine-1-carboxylate of formula IV [structure omitted]
in the presence of low valent titanium	with low-valent titanium species.
wherein said low valent titanium is generated by zinc.	Claim 2. The process of claim 1, wherein the low-valent titanium species are generated by reduction of titanium tetrachloride with zinc dust.
Claim 17. A process as claimed in claim 1 for preparing Loratadine.	

As apparent from Table 1, both Jackson claim 17 and Stampa claim 2 are directed to processes for the preparation of loratadine. Both processes involve reacting a dibenzosuberone with an aliphatic ketone, such as ethyl 4-oxopiperidine-1-carboxylate. Jackson claim 2 differs from Stampa claim 2 in that Jackson does not recite the presence of an organic solvent or a tertiary amine. Further, Jackson claim 2 is written with the "comprising" transitional language as opposed to Stampa's "consisting of" language.

The USPTO has a long history of construing the term "comprising" broadly. *See, e.g., In re Cone*, 121 F.2d 470, 50 USPQ 54 (CCPA 1941). Indeed, the CCPA specifically reminded the USPTO that the term "comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim. *In re Baxter*, 656 F.2d 679, 686, 210 USPQ 795, 802 (CCPA 1981).

Giving Jackson's claims their broadest reasonable construction, Jackson's "comprising" claims are open to the presence of additional, unrecited ingredients. Thus, in contrast to the district court's construction of the term "comprising," Jackson's claims before the USPTO are

open to the inclusion of tertiary amines and organic solvents. Under such a construction, claim 17 of Jackson '827 is anticipated by claim 2 of Stampa's '100 patent and '659 reissue application. Furthermore, citing the "well known" use of tertiary amines to carry out McMurry reactions, Stampa admits that "Jackson claim 17, if prior art to Stampa, renders Stampa claim 2 obvious." (Interference No. 105,002, Paper No. 24, p. 10, Stampa SX 1008 and Decision, p. 12 line 21 to p. 13, line 10).

Additionally, the district court appears to have distinguished Jackson and Stampa's claims due to differences in temperature and yield. (Decision, p. 13, line 11 to p. 14, line 3). There is a heavy presumption in favor of the ordinary meaning of claim language. Neither Jackson '827 claim 17 nor Stampa claim 2 explicitly require a specific temperature or yield. Further, on the record presented, the temperature and/or yield limitations are wholly apart from any need to interpret what the party's meant by the particular words or phrases in these claims. Giving the claims their broadest reasonable meaning, the party's claims are not patentably distinguishable on the basis of unrecited temperature and/or yield limitations.

Jackson '894 claim 1 is similar to Jackson '827 claim 1, except that Jackson '894 employs the "consisting essentially of" transitional language. The Federal Circuit has stated that:

"Consisting essentially of" is a transition phrase commonly used to signal a partially open claim in a patent. Typically, "consisting essentially of" precedes a list of ingredients in a composition claim or a series of steps in a process claim. By using the term "consisting essentially of," the drafter signals that the invention necessarily includes the listed ingredients and is open to unlisted ingredients that do not materially affect the basic and novel properties of the invention. A "consisting essentially of" claim occupies a middle ground between closed claims that are written in a "consisting of" format and fully open claims that are drafted in a "comprising" format.

PPG Indus. v. Guardian Indus. Corp., 156 F.3d 1351, 1354, 48 USPQ2d 1351, 1353-54 (Fed. Cir. 1998). The claimed processes of Jackson '894 claim 1 and Stampa claim 2 are directed toward the production of loratadine. The broadest reasonable construction of Jackson's use of the transitional phrase "consisting essentially of" does not exclude the presence of Stampa's tertiary amine and organic solvent.

Giving the Stampa and Jackson's pending and patented claims their broadest reasonable construction, there exists an interference-in-fact between the parties. Note, the parties will be afforded an opportunity to contest the APJ's construction of the claims and may file a motion for no interference-in-fact during the preliminary motions phase of the interference.

B. No Final Judgment Entered in Concurrent § 291 Proceeding

A factor in determining issue preclusion is the finality of the judgment. For a judgment to be "final" for purposes of issue preclusion, "the decision need only be immune, as a practical matter, to reversal or amendment." *Vardon Golf Company, Inc. v. Karsten Manufacturing Corporation*, 294 F.3d 1330, 1333, 63 USPQ2d 1468, 1470 (Fed. Cir. 2002). The district court's decision is presently on appeal. As such, there is no issue preclusion as the district court's decision is not immune to reversal or amendment.

IV. Additional Matters

A. No Order to Show Cause on Priority

Stampa argues that the district court's non-appealed finding of fact on the issue of priority can be employed in a Jackson-Stampa interference. Stampa requests that Jackson be placed under an order to show cause why judgment should not be entered against Jackson on the issue of priority. (Interference No. 105,002, Paper No. 24, pages 5 and 24). Stampa's request is *denied*.

A count defines the interfering subject matter between the parties. The district court, having determined that there was no interfering subject matter, did not need to articulate a count. In contrast, the APJ has determined that there exists an interference-in-fact and declared this interference based upon Count 1, a process according to claim 17 of U.S. Patent No. 6,093,827. The parties will be afforded an opportunity to file preliminary motions, including motions to redefine the interfering subject matter under 37 C.F.R. § 1.633(c).

B. Comments re Ward Letter (SX 1001)

Stampa submitted a letter written by Jackson's counsel, Mr. Jeffrey Ward, dated August 15, 2000 ("Ward letter"). Stampa cited the Ward letter as evidence that Jackson's counsel believed that an interference-in-fact existed. Jackson argues that the letter is not evidence of an interference-in-fact and that the letter should not be considered by the Board. This issue is *moot* as the APJ did not rely upon the Ward letter in declaring the interference.

C. Serve Papers Upon Third-Party Rey

To promote a thorough consideration of the issues presented in the various interferences and to encourage settlement, the APJ will provide a copy of the papers filed in this interference to third-party Rey, which is involved in related interferences 105,001 and 105,002. Further, the APJ requests that a party filing a paper the 105,069 interference serve that paper upon the opponent as well as Rey.

D. Pending Status of Jackson '894 Application

Prior to declaring this interference, Jackson was afforded an opportunity to abandon the '894 application. (Interference 105,001, Paper No. 17). As of the date of this declaration, Jackson has not abandoned the '894 application.⁴

E. Stampa's '659 Reissue Oath

Special Programs Examiner William Dixon of Technology Center 1600 reviewed Stampa's '659 reissue oath on December 2, 2002. At that time, no substantive or procedural defects were found in the oath.

⁴Jackson notified the Board that they were willing to abandon the '894 application to avoid an additional interference action. Jackson, however, stated that if an additional interference should be declared between Stampa's reissue application and the '827 patent, Jackson would decline to abandon the application. (Interference No. 105,001, Jackson Position, Paper No. 18).

Part. B. Declaration of interference

Based on the facts presented, an interference is declared under 35 U.S.C. § 135(a) between Jackson and Stampa's above-identified applications and patents

Details of the application(s), patent (if any), reissue application (if any), count(s) and claims designated as corresponding or as not corresponding to the count(s) appear in Parts F and G of this NOTICE DECLARING INTERFERENCE.

Part C. Judge designated to handle the interference

Administrative Patent Judge Michael P. Tierney has been designated to handle the interference. 37 CFR § 1.610(a).

Part D. Standing order

A Trial Section STANDING ORDER accompanies this NOTICE DECLARING INTERFERENCE. The STANDING ORDER applies to this interference.

Part E. Intended Motions List and Conference call to set dates

The APJ invites the parties to file lists of intended motions by no later than 5:00 p.m. (EST) on **January 8, 2003**. The lists may be filed by facsimile. The lists shall specifically plead the relief requested.

Only those motions mentioned in the parties' lists of intended motions are authorized. *The parties shall seek an APJ's authorization prior to filing a motion that was not mentioned in*

their respective lists. Unless otherwise provided for, all motions are to comply with USTPO rules and the Standing Order (Paper No. 2).

No conference call to set dates for taking action in the interference is scheduled. The times in this interference are the same as those set in concurrent interferences 105,001 and 105,002.

Time Period 1 is set for **February 14, 2003** and Time Period 8 is set for **July 16, 2003**. To allow the parties the opportunity to coordinate their respective schedules, the parties are allowed to set Time Periods 2 through 7. The parties are to file a copy of their agreed upon times by no later than **January 31, 2003**. A copy of the Order Setting Times for taking action during the preliminary motion phase of the interference accompanies this NOTICE DECLARING INTERFERENCE.

Part F. The parties involved in this interference are:

Junior Party

Named inventors: Alberto Stampa, Barcelona, Spain
Pelayo Camps, Barcelona, Spain
Gloria Rodriguez, Girona, Spain
Jordi Bosch, Girona, Spain
Maria Del Carmen Onrubia, Barcelona, Spain

Application: Reissue Application 10/234,659, filed September 3, 2002

Title: Process for the Preparation of Loratadine

Assignee: Medichem, S.A.

Accorded Benefit: U.S. Patent No. 6,084,100, issued July 4, 2000, based upon U.S.
Application No. 09/058,837, filed April 13, 1998

U.S. Provisional Application 60/048,083, filed May 30, 1997

Attorneys: See last page

Address: See last page

Junior Party

Named inventors: Alberto Stampa, Barcelona, Spain
Pelayo Camps, Barcelona, Spain
Gloria Rodriguez, Girona, Spain
Jordi Bosch, Girona, Spain
Maria Del Carmen Onrubia, Barcelona, Spain

Application: U.S. Patent No. 6,084,100, issued July 4, 2000, based upon U.S.
Application No. 09/058,837, filed April 13, 1998

Title: Process for the Preparation of Loratadine

Assignee: Medichem, S.A.

Accorded Benefit: U.S. Provisional Application 60/048,083, filed May 30, 1997

Attorneys: See last page

Address: See last page

Senior Party

Named inventors: William P. Jackson, Twickenham, UK

Application: U.S. Patent No. 6,093,827, issued July 25, 2000, based on U.S.
Application No. 09/383,078, filed August 26, 1999

Title: Process for the Preparation of 10,11-Dihydro-5H-Dibenzo [A,D]
cyclohept-5-enes and Derivatives Thereof

Assignee: Rolabo S. L.

Accorded Benefit: PCT Application PCT/GB98/00605, filed February 26, 1997
UK Application 9703992, filed February 26, 1997

Attorneys: See last page

Address: See last page

Senior Party

Named inventors: William P. Jackson, Twickenham, UK

Application: U.S. Application 09/525,894, filed March 15, 2000

Title: Process for the Preparation of 10,11-Dihydro-5H-Dibenzo [A,D]
cyclohept-5-enes and Derivatives Thereof

Assignee: Rolabo S. L.

Accorded Benefit: U.S. Patent No. 6,093,827, issued July 25, 2000, based on U.S.
Application No. 09/383,078, filed August 26, 1999

PCT Application PCT/GB98/00605, filed February 26, 1997

UK Application 9703992, filed February 26, 1997

Attorneys: See last page

Address: See last page

Part G. Count and claims of the parties

Count 1

A process according to claim 17 of U.S. Patent No. 6,093,827.

The claims of the parties are:

Jackson, U.S. Patent No. 6,093,827:	1-17
Jackson, U.S. Application No. 09/525,894:	1-28
Stampa, U.S. Patent No. 6,084,100:	1-13
Stampa, U.S. Application No. 10/234,659:	1-18

The claims of the parties which correspond to Count 1 are:

Jackson, U.S. Patent No. 6,093,827:	1-17
Jackson, U.S. Application No. 09/525,894:	1-28
Stampa, U.S. Patent No. 6,084,100:	1-13
Stampa, U.S. Application No. 10/234,659:	1-18

The claims of the parties which do not correspond to Count 1 are:

Jackson, U.S. Patent No. 6,093,827:	None
Jackson, U.S. Application No. 09/525,894:	None
Stampa, U.S. Patent No. 6,084,100:	None
Stampa, U.S. Application No. 10/234,659:	None

Part H. Heading to be used on papers

The following heading shall be used on papers filed in the interference. See § 18 of the
STANDING ORDER.

Filed on behalf of [name of party]
By: Name of lead counsel, Esq.
Name of backup counsel, Esq.
Street address
City, State, and Zip-Code
Tel:
Fax:

Paper 5

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

**ALBERTO STAMPA, PELAYO CAMPS, GLORIA RODRIGUEZ,
JORDI BOSCH and MARIA DEL CARMEN ONRUBIA**
Junior Party,
(U.S. Patent No. 6,084,100
and U.S. Reissue Application No. 10/234,659)

v.

WILLIAM P. JACKSON
Senior Party,
(U.S. Patent No. 6,093,827 and
U.S. Application No. 09/525,894).

Patent Interference No. 105,069 (MPT)

TITLE OF PAPER

⁵ Leave a blank line because the board assigns the paper number.

Part I. Summary of dates for taking action

Times for taking action are set out in the following sections of the STANDING ORDER:

- i. § 7: date for identifying lead and backup counsel.
- ii. § 8: date for identifying any real party in interest.
- iii. § 9: date for requesting copies of involved and benefit applications and patents.
- iv. § 17: date for filing list of proposed preliminary motions.
- v. § 19: date for accomplishing certain discovery.
- vi. § 20: date for filing clean copy of claims.
- vii. § 21: date for filing clean copy of claims in cases with drawings and/or claims containing a means plus function limitation.
- viii. § 23: dates for filing oppositions to Rule 635 miscellaneous motions and dates for filing replies to oppositions.
- ix. § 33: date for objecting to admissibility of evidence.
- x. § 34: date for serving supplemental affidavits or evidence to respond to objection to admissibility of evidence.
- xi. § 35: dates when cross-examination can take place.
- xii. § 45: dates for taking action with respect to settlement discussions

Part J. Order form for requesting file copies

FILE COPY REQUEST

Interference No. 105,069


A copy of Part E of this NOTICE DECLARING INTERFERENCE should be attached to this FILE COPY REQUEST, with a circle by hand around the patents and applications for which a copy of a file wrapper is desired.

To facilitate processing of this FILE COPY REQUEST, the following information should be included:

1. Charge fees to USPO Deposit Account No. _____
2. Complete address, including street, city, state, zip code and telephone number (do not list a Post Office box inasmuch as file copies are sent via commercial overnight courier).

Telephone, including area code: _____

Part J. Signature of administrative patent judge


MICHAEL P. TIERNEY
Administrative Patent Judge

Date: 12/11/02
Arlington, VA

Enc:⁶

Copy of STANDING ORDER
Order Setting Times

⁶No Rule 690(b) or Form PTO-850 is enclosed.

Appendix
ORDER SETTING TIMES
(Times for taking action--preliminary motion phase)

Interference 105,069

1. **TIME PERIOD 1**
Filing preliminary motions
and preliminary statement
February 14, 2003
2. **TIME PERIOD 2**
Filing Rule 633(i) and
Rule 633(j) preliminary motions
3. **TIME PERIOD 3**
Filing of oppositions to
all preliminary motions
4. **TIME PERIOD 4**
Filing of replies
5. **TIME PERIOD 5**
Filing of request for hearing;
motions to suppress and observations
with respect to cross-examination
taken after filing of replies
6. **TIME PERIOD 6**
Filing of oppositions to motions
to suppress and any response to
observations with respect
to cross-examination
7. **TIME PERIOD 7**
Filing replies to oppositions to motions
to suppress
8. **TIME PERIOD 8**
Filing exhibits, sets of preliminary
motions and zip/CD-ROMs
July 16, 2003

ORDERPM6 (replaces ORDERPM5)

cc (via Federal Express):

Counsel for Rey:

Mark D. Lorusso, Esq.
440 Commercial Street
Boston, MA 02109

Tel: 603-427-0070
Fax: 603-723-4609

Counsel for Jackson:

Jeffrey S. Ward, Esq.
MICHAEL, BEST & FRIEDRICH, LLP
One South Pinckney Street
Suite 700
Madison, WI 5370

Tel: 608-257-3501
Fax: 608-283-2275

Counsel for Stampa:

Thomas J. Kowalski
FROMMER LAWRENCE & HAUG, LLP
745 Fifth Ave.
New York, NY 10151

Tel: 212-588-0800
Fax: 212-588-0500